

features. The two human BNPI allelic variants differ by only a single amino acid out of 560 and are 99.8% identical in structure. Mouse BNPI is likewise 99.8% identical in structure to rat BNPI, differing by only one amino acid out of 560. Mouse BNPI differs from human BNPI by only eight amino acids and is 98.6% identical in structure. All four BNPI proteins share the substantial structural features of being 560 amino acids long and 100% identical in the 177 amino acid section from aa111 to aa287 and in the 151 amino acid section from aa370 to aa520. Satisfaction of either alternative test is legally sufficient for a proper Markush group. Since the instant Markush group satisfies both tests, it is clearly proper. It makes no difference that the various amino acid sequences would not be obvious in view of each other because a proper Markush claim may include patentably distinct species. See MPEP §803.02. Consequently, elected amended claim 49 is respectfully submitted to be a proper linking claim linking the BNPI proteins SEQ ID NO:2, SEQ ID NO:4, SEQ ID NO:6 and SEQ ID NO:8.

Applicants further note, however, that pursuant to MPEP §803.02, a requirement for election of species may be made whenever a Markush claim embraces patentably distinct species. Taking the requirement to elect a specific amino acid sequence to be a proper requirement for election of species, applicants hereby elect the human BNPI species of SEQ ID NO:2. Claims 49, 54, 55 and 57-61 are deemed to read on the elected species.

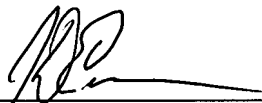
Favorable action on the application is earnestly solicited.

If there are any questions regarding this response or the application in general, a telephone call to the undersigned at (202) 624-2845 would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket # 029310.53352US).

Respectfully submitted,

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